

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

STATE OF NEW MEXICO ex rel.
STATE ENGINEER,

Plaintiff,

vs.

ROMAN ARAGON, et al.,

Defendants.

CIVIL NO. 69-7941 MV/LFG

RIO CHAMA ADJUDICATION

Section 1 of the Rio Chama Stream System

Subfile No. 267

**ORDER ADOPTING MAGISTRATE JUDGE'S FINDINGS
AND RECOMMENDED DISPOSITION**

THIS MATTER is before the Court on United States Magistrate Judge Lorenzo F. Garcia's Magistrate Judge's Findings and Recommended Disposition (Doc. 10939, filed August 2, 2013).

After holding an evidentiary hearing on February 11-12, 2013 regarding the priority date for David M. Ortiz and Cecilia S. Ortiz' water right under Subfile No. 267, the Honorable Lorenzo F. Garcia recommended that the priority date for the water rights described in Subfile No. 267 is 1600. United States Magistrate Judge Lorenzo F. Garcia filed his Magistrate Judge's Findings and Recommended Disposition on August 2, 2013, and set the deadline for filing objections pursuant to 28 U.S.C. § 636(b)(1).

The Magistrate Judge's Findings and Recommended Disposition notified the parties that they must file any objections with the Clerk of the U.S. District Court within the fourteen-day period allowed if that party wants to have appellate review of the findings and recommendations. If no objections are filed, no appellate review will be allowed. *See, e.g., Wirsching v. Colorado*, 360 F.3d 1191, 1197 (10th Cir. 2004) ("firm waiver" rule followed in Tenth Circuit holds that a party who fails to object to magistrate judge's findings and recommendations in timely manner waives

appellate review of both factual and legal questions). Upon motion by Mr. Ortiz, United States Magistrate Judge Lorenzo F. Garcia extended the deadline for filing objections to September 3, 2013, notified Mr. Ortiz that transcripts for the evidentiary hearing may be purchased from the Court Reporters and provided the contact information for the Court Reporters. (Doc. 10956, filed August 19, 2013).

Mr. Ortiz filed his objections to the Magistrate Judge's Findings and Recommended Disposition but did not arrange for transcribing the record as required by Rule 72 of the Federal Rules of Civil Procedure. (Doc. 10959, filed September 3, 2013).

United States Magistrate Judge Lorenzo F. Garcia then ordered Mr. Ortiz to show cause why the Court should not strike his objections based on Mr. Ortiz failure to comply with Rule 72 of the Federal Rules of Civil Procedure. (Doc. 10971, filed October 9, 2013). The Order to Show Cause explained:

When reviewing objections to a Magistrate Judge's factual findings based on conflicting testimony or evidence, the District Judge must "consider[] the actual testimony, and not merely [review] the magistrate[judge's] report and recommendation" which requires that the District Judge "must, at a minimum, listen to a tape recording or read a transcript of the evidentiary hearing." Gee v. Estes, 829 F.2d 1005, 1009 (10th Cir. 1987). Rule 72(b)(2) of the Federal Rules of Civil Procedure provides: "Unless the district judge orders otherwise, the objecting party must promptly arrange for transcribing the record, or whatever portions of it the parties agree to or the magistrate judge considers sufficient."

(*Id.*).

In his response to the Order to Show Cause, Mr. Ortiz asserts that he cannot afford the transcript fees and makes various arguments against the 1600 priority date for his water right, supported by over 300 pages of exhibits, but does not identify any legal authority that would exempt him from complying with Rule 72's requirement that he arrange for transcribing the record. (Doc. 10974, filed October 24, 2013).

After reviewing the Federal Rules of Civil Procedure, the Court Reporters Act (28 U.S.C. § 753), and relevant case law, United States Magistrate Judge Lorenzo F. Garcia concluded:


The Court must follow the Federal Rules of Civil Procedure and applicable case law which require that Mr. Ortiz must arrange for a transcript of the evidentiary hearing to support his objections to the Magistrate Judge's Findings and Recommended Disposition. Mr. Ortiz has not cited, and the Court has not found, any legal authority that would exempt him from the Rule 72 transcript requirement. While the Court recognizes that the transcript fees may be substantial, it cannot require the court reporters to prepare transcripts on their own time without compensation. Because Mr. Ortiz has not arranged for a transcript to support his objections as required by the Federal Rules of Civil Procedure and the Tenth Circuit Court of Appeals, the Court will strike Mr. Ortiz' objections.

(Doc. 10976, filed November 25, 2013).

Because Mr. Ortiz' objections were stricken, there are now no objections for the District Judge to consider, and under the Tenth Circuit's "firm waiver rule," the failure to properly object forecloses both factual and legal challenges.

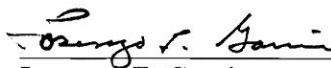
IT IS THEREFORE ORDERED that the Magistrate Judge's Findings and Recommended Disposition are adopted.

Dated this 16 day of December, 2013.



MARTHA VAZQUEZ
UNITED STATES DISTRICT JUDGE

Approved:



Lorenzo F. Garcia
United States Magistrate Judge